

N. KEITH CHAMBERS
EXECUTIVE DIRECTOR

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:

DEREK WEBB,

Complainant,

and

CITY OF CHICAGO ,

Respondent.

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Charge No.: 2009CF3522

EEOC No.: N/A

ALS No.: 10-0394

Judge William J. Borah

RECOMMENDED ORDER AND DECISION

On May 19, 2010, Derek Webb, by and through his attorney, Susan P. Malone, filed a Complaint with the Illinois Human Rights Commission ("Commission"). The Complaint alleges that Respondent, City of Chicago, illegally retaliated against him.

This matter comes to be heard on Respondent's Motion to Dismiss for Lack of Jurisdiction filed on June 18, 2010. On June 23, 2010, an order setting a briefing schedule was entered. Complainant did not file a written response. The matter is ready for decision.

The Illinois Department of Human Rights ("Department") is an additional statutory agency that has issued state actions in this matter. The Department is therefore named herein as an additional party of record.

FINDINGS OF FACT

The following facts were derived from uncontested sections of the pleadings. The findings did not require, and were not the result of, credibility determinations.

1. On April 29, 2009, Derek Webb, Complainant, filed a charge of retaliation with the Department.
2. On December 14, 2009, the Department held a fact finding conference on the matter.
3. On December 14, 2009, the parties agreed in writing to a 300 day extension of the

statutory deadline so the Department could complete its investigation of the charge of retaliation.

4. On February 26, 2010, the Department made a "technical amendment" to the charge.

5. On February 28, 2010, the Department mailed to the parties a letter noting the time frame for filing a complaint or civil action, February 24, 2011 through May 24, 2011.

6. On February 9, 2010, Complainant filed a second charge with the Department, 2010CF2420.

7. On May 19, 2010, Complainant filed his complaint, through his attorney, with the Commission. The Complainant had typed on the face of the pleading, "Charge No: 2009 CF 3522 as amended."

CONCLUSIONS OF LAW

1. Complainant is an individual claiming to be aggrieved by a violation of the Illinois Human Rights Act ("Act").

2. The Commission has jurisdiction over the parties for the purpose of determining whether jurisdiction exists over the subject matter.

3. Section 7A-102(G)(2) of the Act reads that, "Between 365 and 455 days after the charge is filed, or such longer period agreed to in writing by all parties, the Complainant shall have 90 days to ... file his or her own complaint with the Illinois Human Rights Commission..."

DISCUSSION

Complainant failed to respond to Respondent's motion to dismiss as per the June 23, 2010, order. The Commission has said, "We will not search the record to find reasons to deny a motion. If a motion appears valid on its face, and if the other side cannot tell us why the motion should not be granted, we will grant the motion." Jones and Burlington Northern Railroad, IHRC, ALS No. 1704, June 23, 1986.

Derek Webb, Complainant, filed his charge of retaliation with the Department on April 29, 2010. Complainant had the option to file his complaint with the Commission between 365 and 455 days after the charge was filed, or 90 days after any agreed written extension. 775 ILCS 5/7A-102 (G)(2). On December 19, 2009, the parties entered into a written agreement to extend the statutory timeline of 365 days by an additional 300 days. Once the parties entered into the December 14, 2009, written agreement permitting the Department a 300 day extension of its investigation, the window for Complainant to file his complaint with the Commission was moved back 300 days. As per the Department's February 28, 2010, letter to the parties, the new dates for filing are February 24, 2011, through May 24, 2011. Thus, Complainant's May 19, 2010, complaint filed with the Commission was statutorily premature.

Respondent also discussed a second charge filed by Complainant, 2010CF2420. However, except for its speculation that Complainant's complaint incorporated its facts, the second charge is not before the Commission and will not be addressed here.

Therefore, the Complaint filed with the Commission on May 19, 2010, is a nullity and should be dismissed, without prejudice, so the Department can assess Complainant's April 29, 2009, charge.

RECOMMENDATION

Based on the foregoing, it is recommended that Respondent's Motion to Dismiss for Lack of Jurisdiction be granted. The Complaint filed with the Commission on May 19, 2010, should be considered a nullity, and be dismissed, without prejudice, so the Department can assess Complainant's April 29, 2010, charge.

HUMAN RIGHTS COMMISSION

BY: _____
WILLIAM J. BORAH
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: August 12, 2010